

EXHIBIT 4



U.S. Environmental Protection Agency

Pesticides: Endangered Species Protection Program

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Questions and Answers on the Washington Toxics Coalition Endangered Species Litigation

Order from the Court

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In response to a citizen suit filed under the Endangered Species Act against EPA by a group of environmental organizations (Washington Toxics Coalition, et.al. v. EPA), the United States District Court for the Western District of Washington issued on January 22, 2004, an order enjoining, vacating and setting aside EPA's authorization of the use of certain pesticides generally, within 20 yards for ground applications and 100 yards for aerial applications, adjacent to salmon supporting waters in California, Oregon and Washington. Further, the Court ordered EPA to generate and facilitate the availability of a notification of potential hazards to salmonids in major urban areas in the affected states. The Court Order, which became effective February 5, 2004, and information to help pesticide users understand the Order, is available at www.epa.gov/espp. The United States is now reviewing the order in detail and considering legal options.

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1. What is EPA currently doing to protect endangered species?

EPA's risk assessment process for pesticides affords a level of protection to all populations of non-target species. Because endangered species need specific protection, EPA has developed risk assessment procedures to determine whether individuals of an endangered species have the potential to be harmed by a pesticide. When EPA determines a pesticide may harm an endangered species, it can either change the terms of the pesticide's registration to prevent this harm from occurring, or through consultation with the Fish and Wildlife Service or National Marine Fisheries Service, develop appropriate mitigation measures.

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2. What has EPA done about the 55 pesticides identified in the litigation?

EPA has reviewed over half of the 55 pesticides, using its risk assessment procedures for endangered species. For each pesticide, EPA assesses the potential risk to each of 26 subgroups of listed Pacific salmon and steelhead. Of the 34 completed reviews, EPA found that 13 of the pesticides will have no effect on any of the 26 listed subgroups of Pacific salmon or steelhead. For the other 21 pesticides, of the 546 pesticide/subgroup combinations assessed EPA determined that 174 would result in "no effect"; 123 were "not likely to adversely affect"; and 249 "may affect" the listed species.

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3. What is EPA doing about those determinations where the pesticide "may affect" the species?

For each of these determinations, EPA has provided documentation of its assessment to the National Marine Fisheries Service and has requested consultation with them to determine what appropriate, science-based measures might be necessary to prevent jeopardy to the species.

4. Why did the Judge issue this Order?

Chief Judge Coughenour issued this Order in response to the Plaintiffs' motion for injunctive relief to establish buffer zones as an interim measure to minimize the risk of jeopardy from pesticide use, to 26 sub-groups of listed Pacific salmon and steelhead. These measures are intended to be in place until the Environmental Protection Agency, and the National Marine Fisheries Service, where appropriate, have completed an evaluation of whether endangered Pacific salmon and steelhead are particularly sensitive to exposure from 55 specific pesticides.

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5. What does it mean that the Court "vacated" the registration of certain pesticides within buffer zones around Pacific Salmonid supporting waters?

The Court Order means, in practical terms, that any use of these pesticides in the court imposed buffer zones is in violation of the court's order.

6. Is it a violation of FIFRA to use a subject pesticide within the buffer zones?

In an earlier order, the Court made clear that it would neither order EPA to take regulatory action under FIFRA nor would its action setting aside the registrations in the buffer zones constitute a regulatory action under FIFRA. Although failure to comply with the court order is not a violation of FIFRA, EPA recognizes the legal effect of the Court's Order and is providing through our web site and other avenues, information for pesticides users to understand the provisions of the Order.

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7. Are these pesticide harmful to fish?

EPA is in the process of evaluating whether these pesticides pose risks to endangered salmon and steelhead. If EPA through its consultations with NMFS determines that a particular pesticide may harm any of these listed species, the Agency will develop and implement under FIFRA, the appropriate, science-based use limitations necessary to ensure the pesticide's use will not jeopardize the species.

8. Why do the buffer zones apply to these particular pesticides?

These pesticides were identified in a law suit against EPA because of WTC's concerns about potential risks to endangered salmon and steelhead. EPA has already evaluated over half of the 55 listed pesticides and is consulting with NMFS on a subset of those. Although EPA has not yet determined whether there is any potential harm from the pesticides remaining to be evaluated, the court order applies to those pesticides as well.

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9. Do the buffer zones in the Court's Order apply to FIFRA actions involving the subject pesticides that are approved after the effective date of Court's Order, including section 18 and section 24(c) actions?

Yes. New actions, including section 18s and section 24(c)s, are also subject to the Court's order. Accordingly, the buffer zones apply with equal effect to actions approved either before or after February 5, 2004. States may, therefore, wish to inform pesticide users of the court order in connection with any new section 18 and 24(c) actions that they request or approve.

10. What waters are considered "salmon supporting waters"?

For purposes of this legal action, the court has determined that "salmon supporting waters" are the area below the ordinary high water mark of all streams, lakes, estuaries, and other water bodies where salmon are ordinarily found at some time of year."

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11. Does the court order apply only to agricultural uses of these products?

No. The order applies to any of the registered pesticide uses, with certain exceptions spelled out in the Order.

12. When will EPA finish reviewing these pesticides?

The Court ordered EPA to review the 55 pesticides on a 2 ½ year schedule. The last date of that schedule is December 1, 2004. EPA is on schedule with its reviews and has assessed over half of the 55 pesticides. Of those assessed to date, 13 were determined to have "no effect" on the species. For the other 21 pesticides, EPA is in consultation with the National Marine Fisheries Service to determine what appropriate, science-based measures may be necessary to prevent jeopardy to the species.

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13. When EPA finishes reviewing these pesticides, will the court ordered buffer zones be lifted?

The court's order provides that the buffer zones will be lifted for any particular

pesticide/species/use combination for which EPA determines that the pesticide either has "no effect" or NMFS "has not rejected or affirmatively failed to concur" on EPA's "not likely to adversely affect" determination. In addition, for pesticides subject to formal consultation with NMFS, the measures will be lifted once NMFS issues a biological opinion following consultation. As EPA reviews the pesticides/species/use combinations and completes any required consultation with NMFS, EPA will determine whether any permanent appropriate, science-based measures should be adopted under FIFRA.

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14. How will I know if the court changes the buffer zones, areas and pesticide uses subject to the injunction?

EPA is developing a web based system that indicates the waters and pesticides addressed by the Court Order. EPA will update this system when the injunction is lifted for any specific pesticide/species/use combinations. It is advisable to look at this information just prior to using a pesticide to determine whether the injunction has been lifted.

15. What is EPA's process for protecting endangered and threatened species?

EPA's risk assessment process for pesticides affords a level of protection to all populations of non-target species. Because endangered species need specific protection, EPA has developed risk assessment procedures to determine whether individuals of an endangered species have the potential to be harmed by a pesticides. When EPA determines a pesticide may harm an endangered species, it can either change the terms of the pesticide's registration to prevent this harm from occurring, or in consultation with the Fish and Wildlife Service or National Marine Fisheries Service, develop appropriate mitigation measures. EPA issued a notice for public comment in December 2002, describing how it would implement any measures it deems necessary to protect a listed species. A final notice describing EPA's implementation approach is anticipated to be issued in 2004. Further, on January 30, 2004 the Department of the Interior and the Department of Commerce, in cooperation with EPA and USDA, published for public comment a proposed counterpart ESA consultation regulation for pesticide actions that EPA approves under FIFRA. This regulation is intended to make the ESA consultation process for pesticides more effective and efficient by better utilizing EPA's expertise in ecological risk assessment.

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16. What is the status of the Agency's review of the 55 pesticides?

In a July 2, 2002 order, the court established a 2 ½ year schedule for EPA to review 55 pesticides identified in the lawsuit. The Agency has completed its assessment of over half of the 55 pesticides and is consulting with NMFS on certain determinations. Of the 34 active ingredients already reviewed, 13 resulted in a determination that they would have no effect on the listed salmonids and are therefore, not subject to the Court Order. For the other 21, EPA and NMFS are discussing the development of biological opinions. For any species/use combination for these 21, the court order does not apply to determinations that the pesticide is "not likely to adversely affect" the species "provided that the National Marine Fisheries Service has not rejected or affirmatively failed to concur" in that determination."

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17. Where can I get more information about this Court Order?

A copy of the court order and other information that will assist pesticide users in understanding the order, is posted on EPA's web site at www.epa.gov/espp.

18. Where can I get more information about the Endangered Species Protection Program?

The Agency's web site contains information about this program at www.epa.gov/espp. Information on effects determinations is available on the Agency's Web site at <http://www.epa.gov/oppfead1/endanger/effects/>. Interested parties can also contact Mary Powell, Endangered Species Team, Office of Pesticide Programs (7506C), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460. Mary may be contacted by phone at 703-305-7384 and by e-mail at powell.mary@epa.gov.

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